(2) that there was a contradiction on the face of the writs as to the identity of the plaintiff.

Now, the plaintiff in each case was the Comptroller of Income Tax, Singapore, and both writs purport on the face of them to be issued by the plaintiff. They are in fact signed by one W. Gordon described as an Assistant Comptroller of Income Tax, Singapore, and then follow the words "Plaintiff in Person". This phrase, in my view, is used merely in antithesis to "plaintiff's solicitor".

Under the Rules of the Supreme Court a writ and statement of claim must be signed either by the plaintiff's solicitor or by the plaintiff if, as here, he sues in person and the short point for decision is whether the writs and statements of claim endorsed thereon have been signed by the plaintiff in conformity with the Rules of the Supreme Court.

Section 90(1) of the Income Tax Ordinance provides that tax may be sued for and recovered in a Court of competent jurisdiction by the Comptroller in his official name. Now, the Comptroller is defined in section 2 of the Ordinance as meaning "the Comptroller appointed under section 5 of this Ordinance and includes for all purposes of this Ordinance except the exercise of the powers conferred upon the Comptroller by sections 95, 96 and 99 of this Ordinance, a Deputy Comptroller or an Assistant Comptroller so appointed."

Having regard to this definition, I am of the opinion that an Assistant Comptroller is included in the term Comptroller in section 90(1) of the Ordinance.

In the view I take, Mr. Gordon did not sign the writs and statements of claim as Assistant Comptroller of Income Tax which was merely his official title which described his appointment in the Income Tax Department. He signed as therein stated, namely, the plaintiff i.e. the Comptroller of Income Tax, Singapore, in which term title or official name he is included by virtue of the definition.

Similarly, under section 90(2) of the Ordinance, which provides that the Comptroller may appear personally or by Counsel in any suit instituted under this section, Mr. Gordon as an Assistant Comptroller of Income Tax could appear as the Comptroller as by the definition he is included in the term.

I think the case of *The Comptroller of Income Tax, Singapore* v. *Dia Singh* [1] to which I was referred and on which considerable reliance was placed by the defendant is distinguishable.

In that case judgment had been obtained by the Comptroller of Income Tax and a Bankruptcy Notice founded on the judgment had been issued in his name. A Bankruptcy Petition was then presented not by the Comptroller of Income Tax but by one William Gordon, Assistant Comptroller of Income Tax, personally, who in the affidavit accompanying the petition stated he was the petitioning creditor. It was the Comptroller of Income Tax who was the petitioning creditor and not Mr. Gordon, the Assistant Comptroller of Income Tax.

For these reasons, I have come to the conclusion that there was here a sufficient compliance with the Rules of the Supreme Court and both summonses must therefore be dismissed with costs.

Applications dismissed.

Solicitors: *Elias Bros.; State Advocate-General.*

CHYE HIN CO. (PERAK) LTD. v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) January 5, 1960]

[Ipoh — Criminal Appeal No. 59 of 1959]

Employees Provident Fund — Collective contract — Whether contract of service or independent contract — Employees Provident Fund Ordinance, 1951, s.16A(1)(c) and Employees Provident Fund Regulations, 1952, reg. 3.

The Employees Provident Fund Ordinance applies only to contract of service; it does not apply to the independent contractor. To distinguish between an independent contractor and a servant one of the tests is whether or not the employer retains the power, not only of directing what work is to be done, but also of controlling the manner of doing the work.

In this case the question was whether four sawyers were severally employed by the appellant company so that there existed between each of them and the company a contract of service or whether they formed a partnership which was contracting independently with the company to saw wood for the company. There was no evidence that the person doing the work could be overlooked and directed in regard to the manner of his doing the work. The Manager appeared to have criticised the work when completed but never to have interfered while the work was being done. The Manager did not appear to have the right to dismiss any particular one of the sawyers; he had the right to terminate the services of all of them for bad work but not of any particular one.

Held: (1) on the facts there was a collective contract with a partnership not individual contracts;

(2) the sawyers were not employed by the company under a contract of service and therefore the company were not liable to pay contributions to the Employees Provident Fund Board in respect of the sawyers.

Cases referred to:—

(1) *Cameron & Anor.* v. *Nystrom*, [1893] A.C. 308.

(2) *Vamplew & Ors.* v. *Parkgate Iron & Steel Co. Ltd.* [1903] 1 K.B. 851.

MAGISTRATE'S CRIMINAL APPEAL.

P. J. D. Regester (*Meera Hussain* with him) for the appellant.

Raja Azlan Shah (Federal Counsel) for the respondent.

Smith J.: This is an appeal by the defendant Company against its conviction on the following charge —

"That you, being the employer liable to pay contributions to the Employees Provident Fund Board under

the E.P.F. Ordinance No. 21/1951, did fail to pay contributions in respect of your employee, Chan Swee Tak for the month of December, 1958, within the last day of the month in respect of which the contributions were due, to wit, by 31st January, 1959, as prescribed under Regulation 3 of the Employees Provident Fund Regulations, 1952, and thereby committed an offence punishable under section 16A(1)(c) of the Employees Provident Fund Ordinance, 1951."

At the close of the prosecution case the appellant's Counsel made a submission which was rejected by the learned Magistrate who called upon the defendant Company for its defence. No defence was made and the learned Magistrate proceeded to convict and fined the defendant Company against which conviction and sentence the defendant Company has now appealed.

The defendant Company is the owner of a sawmill. The question is whether four sawyers are severally employed by the defendant Company so that there exists between each of them and the Company a contract of service or whether the four sawyers form a partnership which is contracting independently with the Company to saw wood for the Company.

Evidence was given by three of the sawyers to the effect that they had been working at the mill for the last four years without a break. There was no written agreement with the Company. The principal sawyer, Mr. Chan Swee Tak, gave evidence that he recruited the other three sawyers to work with him and that they were his brothers. He described their work as being to saw logs into planks at the Company's premises. The mechanical saw which they use is on the Company's premises and belongs to the Company. Mr. Chan was the kepala of the sawyers and gave evidence that the partnership was paid according to the tonnage of work which they did each month. At the end of each month it appears that the earnings of the partnership was split amongst the four of them in the proportions 9 : 8 : 7 : 6. In December, 1958, the month to which the charge relates, the partnership received the total sum of $916.49 from which a miscellaneous deduction of $142.50 was made leaving $773.99 to be divided which was done in the proportion of $233.18 to Chan Swee Tak, $207.25, $181.36 and $152.20 to the other three brothers.

The system under which the four sawyers worked was that a clerk employed by the Company would write on a blackboard the type of planks required, and these would be sawn by the four sawyers. The sawyers were never asked to change from one consignment of planks to another to suit the convenience of the Company. Work began any time between 7.00 and 8.00 a.m., usually at 8.00 a.m. and stopped between 5.00 and 6.00 p.m. If there was a large consignment the four sawyers would work longer hours. There appears to have been no supervision of the work other than that if the timber was not sawn according to size a complaint would be made to Mr. Chan. When this happened the sawyers would encourage each other to work more carefully. If at any time one of the sawyers fell ill a substitute would be produced to act for him without the need of obtaining any permission from the Company. Evidence was given that the four sawyers could not be dismissed individually but only as a team.

The learned Magistrate has found that the relationship of master and servant existed between each of the sawyers and the Company, and that they were not collectively independent contractors. He deduced this principally from the fact that the saw used by the four sawyers belonged to the Company and was maintained by the Company on the Company's premises, and that the logs and the sawn planks all belonged to the Company. In this the learned Magistrate applied the principles stated by Shepherd J., in Raub Criminal Appeal No. 4/57 unreported. As the learned Magistrate said this evidence was not conclusive but when he considered it in conjunction with additional facts (a) that the Manager occasionally came and watched that the timber was sawn according to size, and (b) that if the sawyers made mistakes the Company could dismiss them, he came to the conclusion that the *nexus* of master and servant had been established between the Company and each of the sawyers.

I have had the benefit of reading the judgment of Shepherd J., though I have not seen the full facts upon which that decision was based. I agree that the fact that the saw belongs to the Company, is maintained by the Company, and is on the Company's premises, are elements which point to the four sawyers being employees of the Company. It is as the learned Magistrate says however not conclusive as shewn by the case of *Cameron and Another* v. *Nystrom*[1] which is authority for the proposition that stevedores who work the cranes of a ship are not necessarily the servants of the shipowners.

The dividing line between a contract of service and a contract with an independent contractor is often very fine. As Mr. Regester pointed out the Employees Provident Fund Ordinance, 1951, applies only to contracts of service; it does not apply to the independent contractor and, in this respect, it differs materially from the Workmen's Compensation Ordinance, 1952. Section 19 of that Ordinance imposes on a principal a liability in the case of workmen employed by contractors.

Looking at the facts of this case as a whole, I cannot agree that the prosecution has proved that a contract of service exists between the Company and each of the sawyers. To distinguish between an independent contractor and a servant one of the tests is whether or not the employer retains the power, not only of directing what work is to be done, but also of controlling the manner of doing the work. I cannot find in

this particular case any evidence that the person doing the work could be overlooked and directed in regard to the manner of his doing the work. The Manager appears to have criticised the work when completed but never to have interfered while the work was being done.

The Manager does not appear to have had the right to dismiss any particular one of the sawyers. He had the right to terminate the services of all of them for bad work but not of any particular one. This appears to me to indicate a collective contract with a partnership and not individual personal contracts. It is also to be noted that the earnings were paid as a lump sum to Mr. Chan, not individually to each sawyer.

The facts of the case of *Vamplew & Ors.* v. *Parkgate Iron & Steel Company, Limited*[2] are somewhat similar to this. In that particular case a man was injured by an accident while doing work for manufacturers at their works. The question arose whether or not he was an independent contractor or their servant. Evidence was given by the deceased's brother of which the judge's note was as follows: "My brother worked there. He had a sub-contract. He worked breaking steel with a steel ball and breaking cinders with a stone, both of which belonged to the company. He was paid on tonnage of steel and cinders that he broke and cut. Part of his work was done in a place called 'the pits'. He would have occasion in the course of his work to go into 'the pits'. He had five men and two boys working under him." The County Court judge found that the deceased was an independent contractor. The judgment was upheld by the Court of Appeal. In delivering his judgment Sterling L.J. said: "I confess that I should have felt better satisfied, if there had been clearer evidence as to the exact nature of the relation between the deceased man and the respondents, but the burden lies on the appellants of shewing that the deceased man was a workman in the employment of the respondents within the meaning of the Act (i.e. Workmen's Compensation Act 1897)." In this particular case the sawyers have all stated that they are independent contractors. I do not consider that the prosecution has adduced sufficient facts to shew that the relationship between the Company and the sawyers was that of master and servant. I rely principally on the two facts, first that there was no general supervision, only apparently a right to reject bad work and secondly that there was no right to dismiss any individual sawyer.

I am not satisfied from the facts of this particular case that the sawyers were employed by the Company under a contract of service and therefore the appeal must be allowed, the conviction quashed, and the fine returned to the appellant.

Appeal allowed.

Solicitors: *Leong Yew Koh & Co.*

LEE AH HOONG v. HO SAY ENG

[A. C. J. (Ambrose J.) February 24, 1960]

[Singapore — District Court Appeal No. 45 of 1959]

Landlord and Tenant — Control of Rent Ordinance (Cap. 242), s.15(1)(a) and (2) — Contents of notice of demand under s.15(1)(a).

On true construction, section 15 (2) of the Control of Rent Ordinance does not require the notice of demand to state whether the person to whom the rent may be tendered is the landlord or not.

DISTRICT COURT APPEAL.

F. B. Oehlers for the appellant.

Respondent not represented.

Ambrose J.: The point for determination in this appeal was this: does section 15(2) of the Control of Rent Ordinance require the notice of demand under section 15(1)(a) to state whether the person to whom the rent lawfully due may be tendered by the tenant is the landlord or not? The learned District Judge held that it does. He further decided that the notice of demand in this action was not a proper demand as it did not comply with this requirement, and dismissed the claim for possession solely on that ground. Section 15(2) provides that for the purposes of section 15(1)(a):

> "a notice of demand shall give the name and address of the person, whether he is the landlord or not, to whom the rent lawfully due may be tendered by the tenant . . ."

In my opinion, the true construction of section 15(2) is this. It states that the notice of demand shall give the name and address of the person to whom the rent lawfully due may be tendered by the tenant. It provides that this requirement shall be complied with, whether the person to whom the rent may be tendered is the landlord or not. In my view, it does not require the notice of demand to state whether the person to whom the rent may be tendered is the landlord or not.

Apart from his opinion that the notice of demand was not a proper one, the District Judge considered it reasonable that an order for possession should be made in favour of the plaintiff. In the circumstances, I set aside his judgment and made an order requiring the defendant to give possession of the premises to the plaintiff on or before the 29th February, 1960.

Order accordingly.

Solicitors: *Oehlers & Co.*

PUBLIC PROSECUTOR v. KONG LING MEDICAL AID SERVICE & ANOR.

[A. Cr. J. (Smith J.) March 3, 1960]

[Ipoh — Criminal Appeal No. 67 of 1959]

Insurance — Securities with the Accountant-General — Default in depositing by company carrying on a life assurance business — Life Assurance Companies Ordinance, 1948, ss.4(1) and 28(1).

Contract — Policies of assurance upon human life — Prospectus and passbook — Whether prospectus mere advertisement puff.